

Remarks

Claims 69-80 are pending.

Rejection Under 35 U.S.C. § 102

Claims 69-80 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Quinn et al. (U.S. Patent No. 6,632,440).

Applicant traverses the rejection as it relates to the pending claims.

Applicant submits that Quinn et al. is not prior art with respect to the above-identified patent application, and therefore, Quinn et al. cannot be used to reject the present claims.

The present claims have been rejected under the version of 35 U.S.C. § 102(e) prior to the amendment by the AIPA since the above-identified patent application was filed on January 19, 2000. However, applicant submits that 35 U.S.C. § 102(e) was further amended by the Intellectual Property and High Technology Technical Amendments Act of 2002, which generally states that all pending U.S. patent applications are subject to the amended version of § 102(e). A copy of the November 4, 2002 Memorandum from Stephen G. Kunin discussing the revisions to 35 U.S.C. § 102(e) is submitted herewith. Thus, applicant submits that the rejection under the pre-AIPA version of 35 U.S.C. § 102(e) is improper.

Nevertheless, under either version of § 102(e), applicant submits that Quinn et al. is not prior art to the subject application. Quinn et al. is not available as prior art to the above-identified application because the prior art date (i.e., May 29, 2001) is later than the filing date of the above-identified application (i.e., January 19, 2000).

The Quinn et al. patent is a U.S. patent issuing from an International Application filed on August 25, 1999 (before November 29, 2000). The date on which the International Application became a national application in the U.S. (i.e., the 371(c)(1), (2), (4) date) is May 29, 2001. Thus, under both the pre-AIPA version of 35 U.S.C. § 102(e), and the version of § 102(e) as amended by the Intellectual Property and High Technology Technical Amendments Act, that is the prior art date of Quinn et al. is May 29, 2001 (after the filing date (January 19, 2000) of the above-identified application). In support of applicant's submission, applicant provides the following paragraph, which is the first paragraph of page 2 of the enclosed Memorandum from Mr. Kunin:

Patents issued from IAs (International Applications) filed prior to **November 29, 2000** may be applied as of the date of compliance with 35 USC § 371(c)(1), (2), and (4). U.S. application publications and WIPO publications of IA's filed prior to **November 29, 2000** may not be applied as of the IA filing date or the § 371(c)(1), (2) and (4) date.

Accordingly, applicant submits that Quinn et al. is not a prior art reference to the subject application under 35 U.S.C. § 102(e), and the rejection has been overcome.

In conclusion, applicant has shown that the present claims are not anticipated by the prior art under 35 U.S.C. § 102. Therefore, applicant submits that the present claims, that is claims 69-80 are allowable. Therefore, applicant requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Date: April 19, 2004

Respectfully submitted,


Frank J. Uxa
Attorney for Applicant
Registration No. 25,612
4 Venture, Suite 300
Irvine, California 92618
(949) 450-1750
(949) 450-1764 Facsimile